DEPARTMENT OF FOOD AND AGRICULTURE PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Section 4500, Noxious Weed Species

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

<u>Description of the Public Problem, Administrative Requirement, or Other Condition or</u> Circumstance the Regulations are Intended to Address

These regulations are intended to address the obligations of the Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 4500 is to establish the weed species that have been designated as noxious by the Secretary. Plant species that have been designated as noxious weeds may be subject to various restrictions including the statutory provisions for weed-free areas, noxious weed management, and provisions of the California Seed Law. Management or control activities taken against noxious weeds may both protect California's agricultural industry and protect important native plant species.

The factual basis for the determination by the Department that amendment of these regulations is necessary is as follows:

Section 5004, Food and Agricultural Code, defines "noxious weed" as any species of plant that is, or is liable to be, troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate, which the Secretary, by regulation, designates to be a noxious weed. It also provides that in determining whether or not a species shall be designated a noxious weed for the purposes of protecting silviculture or important native plant species, the Secretary shall not make that designation if the designation will be detrimental to agriculture.

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Section 4500 designates those weed species that are noxious weed species. Noxious weed species pose a hazard to agriculture and some native plant species in California, although some may have been grown for ornamental purposes. The Department proposes to amend Section 4500 to remove the following plants listed as noxious weed species *Cynodon* spp. & *hybrids* (Bermuda grass); *Gaura coccinea* (scarlet gaura); *Gypsophila paniculata* (baby's breath); *Imperata brevifolia* (satintail); *Iris douglasiana* (Douglas iris); *Iris missouriensis* (western blue flag); *Malvella leprosa* (alkali mallow); *Orobanche cooperi* (Cooper's broomrape); and, *Polygonum coccineum* [= *P.amphibium*] (kelp).

Section 403, Food and Agricultural Code (FAC), states, "The department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds." *Cynodon* spp. & *hybrids* (Bermuda grass) and *Gypsophila paniculata* (baby's breath) are so imbedded within the nursery and floriculture trade that it is not feasible or totally desirable to prevent their further statewide spread through the affected industries. The Department acknowledges that these plants can be an invasive plant or weed in need of control under specific circumstances. However, control or eradication efforts are not needed on a statewide basis. Additionally, if a local agency has a specific need, they have the option to adopt a local ordinance to protect the entire county or portions of the county, dependent upon the specific needs.

In the future, the Department intends to amend its regulations pertaining to the Nursery Stock Standards of Cleanliness as authorized under Section 6901, FAC. The purpose of this future amendment will be to ensure that it is clear that noxious weeds are a pest plant and do not meet the nursery stock standards of cleanliness. The intent of this future amendment is to eliminate the sales of all noxious weeds from sales through California's nursery industry.

<u>Cynodon spp. & hybrids (Bermuda grass)</u> is grown as a turfgrass or as forage for livestock, but it also can be an invasive weed. It was apparently introduced from Africa (not Bermuda) in 1751 and is widely spread throughout the southwest and southern United States. Bermuda grass is found in most areas of California at elevations below 3,000 feet and is

common in gardens, landscapes, turf areas, orchards, roadsides, vineyards, and industrial areas. Bermuda grass also has many other common names including couchgrass, devilgrass, wiregrass, or dogtooth grass. Improved hybrids of Bermuda grass (Tifgreen, Tifdwarf, Tifway, Santa Ana) with fine leaves and a longer season of dark green color have been developed specifically for use as turfgrass. These hybrid varieties do not produce seed, whereas common Bermuda grass produces seeds that remain viable in soil for at least two years. The United States Department of Agriculture's Natural Resources Conservation Service reports that Bermuda grass has naturalized in 37 California counties.

Bermuda grass is listed by regulation as an agricultural seed under Section 3899, Schedule I, (a) Agricultural Seeds, Title 3, of the California Code of Regulations (CCR) and has labeling requirements that have to be met under Section 3863 (CCR). Additionally, under Section 3901, Schedule III, Agricultural and Vegetable Seeds Classed as Weed Seeds When Occurring Incidentally in Agriculture Seeds*, CCR, Bermuda grass is specifically listed. Currently, under statutory authority, as a noxious weed, the Department shall prevent the introduction and spread of Bermuda grass. However, as an agricultural seed, the Department is trying to ensure compliance with the regulations developed under authority of the California Seed Law. As it is no longer feasible for the Department to prevent the spread of Bermuda grass and there are desirable cultivars for planting, to resolve this apparent enforcement conflict, the Department proposes to remove Bermuda grass from its list of noxious weeds.

Gypsophila paniculata (baby's breath) was introduced from Eurasia. It is an herbaceous perennial with sparse foliage and slender, openly branched stems, to one meter tall and commonly grown as an ornamental and is specifically used in the floral trade in California. It has escaped cultivation and is a weed in some situations. According to the United States Department of Agriculture's Natural Resources Conservation Service, Gypsophila paniculata is known to be naturalized in at least 22 states and this includes 16 California counties that stretch almost the length of the State. However, only two states, California and Washington, list Gypsophila paniculata (baby's breath) as a noxious weed. The Department is not conducting any control or eradication projects targeting baby's breath

and is not aware of any being conducted by a California County Agricultural Commissioner. There are several double flowered cultivars that are generally grafted onto single flowered rootstocks. To ensure it maintains its double flowers, care must be taken to never cut the plant back below this graft union or it will revert. There also are claims that the double flowered cultivars are sterile. However, research has demonstrated that one hundred percent sterility does not occur. Additionally, baby's breath is grown as a nursery crop within California and it is used extensively as cut flowers in the florist trade, including its distribution through retail supermarket chains. It must be presumed that although being used as cut flowers, some viable seeds may also be present. This potential seed bank reservoir is constantly being distributed up and down the State every day. Given the extensive distribution of baby's breath every day for many years with no apparent documented adverse effects, therefore, the Department proposes to remove it from the noxious weed regulation.

Most people accept the concept that California native plants are plants that existed in California prior to the arrival of Europeans. Additionally, there is no rule that states that a native plant cannot also be a noxious weed (or invasive plant) when located outside its natural native range due to artificial movement by people, domesticated animals, etc. However, as a matter of practice, the Department believes it is appropriate to minimize any listings of California native plants as noxious weeds, especially when other alternatives exist.

There are currently nine California native plants listed under the noxious weed regulation. The Department is proposing to remove eight of them from the regulation. The Department is not conducting any control or eradication projects targeting these eight native plants and is not aware of any being conducted by a California County Agricultural Commissioner. It is thought that these California native plants were initially added to the noxious weed regulation to protect agricultural production areas from artificial contamination through the movement of the plants propagules as contaminates. This occurred prior to the enactment of the California Seed Law and its subsequent regulations. If agricultural interests still need additional protection from these eight native plants contaminating seed for planting, the

Department believes that this can best be achieved through the regulations promulgated under the authority of the California Seed Law. If these plants are growing as a contaminate (weed) in nursery containers along with the desired plant type, a stop sale order may be issued under authority of the nursery stock standards of cleanliness regulation, Section 3060.2(a) to prevent its artificial dissemination.

However, this is not the case with one of the native plants. The Department is not proposing to remove *Heteropogon contortus* (tanglehead). Although tanglehead is a California native, it has a very limited natural distribution to some of the desert areas of Imperial County. When an incipient infestation of tanglehead has been discovered outside of Imperial County, it has been eradicated.

<u>Gaura coccinea</u> (scarlet gaura or scarlet beeblossom) is a native perennial wild flower that can be weedy or invasive. The United States Department of Agriculture's Natural Resources Conservation Service reports that scarlet gaura has naturalized in 15 California counties. The Calflora indicates that it has been reported from 14 counties. According to the University of California's Jepson Flora Project, its California floristic province is in the Tehachapi Mountain area and its desert province is in the Desert Mountains of southeastern California.

Imperata brevifolia (satintail) is a native perennial grass. The United States Department of Agriculture's Natural Resources Conservation Service reports that satintail has naturalized in 14 California counties. The Calflora reports a similar distribution. According to the University of California's Jepson Flora Project, its bioregional distribution includes the San Joaquin Valley, South Coast, San Gabriel Mountains, San Bernardino Mountains, Mojave Desert and it is cultivated elsewhere.

<u>Iris douglasiana (Douglas iris)</u> is a native perennial wild flower originating from a rhizome and is common and widespread in California's coastal areas. It also occurs along the Oregon coast. According to the United States Department of Agriculture's Natural Resources Conservation Service this iris has also been reported as occurring inland, in the counties that surround the San Francisco Bay. This iris naturally clumps and often single

clones may be found along the coast that may be hundred of years old. This iris is commonly used in the nursery trade, being sold as a native plant and as parent stock to be used in making additional iris hybrids.

<u>Iris missouriensis</u> (western blue flag) is a native perennial wild flower originating from a rhizome. This iris can be found in the western half of the United States. The United States Department of Agriculture's Natural Resources Conservation Service reports that western blue flag has naturalized in 27 California counties. The Calflora reports that it occurs in 23 counties. According to the University of California's Jepson Flora Project, its bioregional distribution includes North Coast Ranges, Sierra Nevada, Inner South Coast Ranges, Transverse Ranges, Peninsular Ranges and the Great Basin Floristic Province. It is also sold as a native plant within California.

<u>Iva axillaris</u> (povertyweed) is a native perennial subshrub which naturally occurs in approximately half of the United States. It is a member of the Aster family. The United States Department of Agriculture's Natural Resources Conservation Service reports that poverty weed has naturalized in 30 California counties. The Calflora reports that it occurs in 26 California counties. According to the University of California's Jepson Flora Project, its bioregional distribution includes all of California with preferences for saline habitats.

<u>Malvella leprosa</u> (alkali mallow) is a perennial native herb which naturally occurs in 12 states from the west coast down into Texas. The United States Department of Agriculture's Natural Resources Conservation Service reports that poverty weed has naturalized in 30 California counties. The Calflora reports that it occurs in 31 California counties. According to the University of California's Jepson Flora Project, its bioregional distribution includes all of California (especially Great Central Valley).

<u>Orobanche cooperi</u> (Cooper's broomrape) is a parasitic plant which is also referred to as desert broomrape. It naturally occurs in six states stretching from California down into Texas. The United States Department of Agriculture's Natural Resources Conservation Service reports that Cooper's broomrape has naturalized in seven California counties. The

Calflora reports that it occurs in six California counties. Broomrapes, species of *Orobanche*, are considered federal noxious weeds. Alabama, Florida, Massachusetts, Minnesota, North Carolina, Oregon, South Carolina and Vermont also consider broomrapes to be a noxious weed or a quarantine plant pest. California also lists *Orobanche ramosa*, branched broomrape, as a noxious weed. While Cooper's broomrape has damaged some desert plantings of California tomatoes, this damage could be equally mitigated through the regulations pertaining to California Seed Law and the nursery stock cleanliness standards.

Polygonum coccineum (kelp) is a native perennial fresh water aquatic herb. However, the nomenclature of this species has changed. Kelp (not associated with seaweed) is now known as P. amphibium L. var. emersum (longroot smartweed). The United States Department of Agriculture's Natural Resources Conservation Service reports that longroot smartweed has naturalized in 33 California counties. The Calflora reports that it occurs in 34 California counties. With the changes in nomenclature, plants of *P. amphibium* are commonly referred to as water knotweed which is also native to California. The United States Department of Agriculture's Natural Resources Conservation Service reports that water knotweed has naturalized in 40 California counties. A P. amphibium L. var. stipulaceum, water smartweed, also occurs as a native in California. The United States Department of Agriculture's Natural Resources Conservation Service reports that water smartweed has naturalized in 26 California counties. All of these species and varieties can be weedy and invasive. The Department of Fish and Game maintains an ecological reserve on the West Branch of Struve Slough, located in Watsonville. There are two lists of plants that have been complied that pertain to this ecological reserve: 1) native plants and 2) common invasive species. *Polygonum coccineum* appears on the native plant list. The Department is currently tasked with preventing the spread of longroot smartweed and the Department of Fish and Game is protecting it in an ecological reserve as a native species. Rather than updating the nomenclature pertaining to these aquatic herbs in the regulation, the Department believes it is more appropriate to remove this native plant from the regulation.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 4500 does not impose a mandate on local agencies or school districts. The Department also has

determined that no savings or increased costs to any state agency, no reimbursable costs or savings to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant adverse economic impact on businesses was based on the following:

Some of these plants are currently produced by nurseries involved in the production of cut flowers, turfgrass and native plants. The removal of these plants would eliminate the restrictions pertaining to noxious weeds. Therefore, there are no costs for compliance.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would <u>not</u>: 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

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University of California Statewide Integrated Pest Management Program, Bermudagrass (Revised 5/07), printed on October 15, 2007.

United States Department of Agriculture, Natural Resources Conservation Service, PLANTS Profile for *Gypsophila paniculata* L. – baby's breath, printed on October 15, 2007.

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United States Department of Agriculture, Natural Resources Conservation Service, PLANTS Profile, County Distribution, *Iris missouriensis* Nutt. – Rocky Mountain iris, printed on October 11, 2007.

Calflora, Taxon Report – 4356, *Iris missouriensis* Nutt., printed on October 16, 2007.

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Calflora, Taxon Report – 4388, *Iva axillaris* Pursh ssp. robustior (Hook.), printed on October 16, 2007.

University of California's Jepson Flora Project: Jepson Interchange, Jepson Manual treatment for IVA axillaris subsp. robustior, printed on October 16, 2007.

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October 11, 2007.

United States Department of Agriculture, Natural Resources Conservation Service, PLANTS Profile, County Distribution, *Malvella leprosa* (Ortega) Krapov. - Alkali mallow, printed on October 11, 2007.

Calflora, Taxon Report – 5356, *Malvella leprosa* (Ortega) Krapov., printed on October 16, 2007.

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Calflora, Taxon Report – 6735, *Polygonum amphibium* L. var. *emersum* Michx., printed on October 16, 2007.

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visits in 1997, Transcribed by Laura Kummer in 2003.